

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

BLI NORTHWEST, INC., f/k/a
DIAMOND B CONSTRUCTORS, INC.,

and

CREATIVE SUSTAINABLE SOLUTIONS,
INC., HARRIS ACQUISITION IV, LLC,
and HARRIS CONTRACTING COMPANY
d/b/a HARRIS

Defendants.

CIVIL ACTION NO. 2:18-cv-00926

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, (“ADA” and “ADAAA”) to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Angela Watson, who was adversely affected by such practices. The Equal Employment Opportunity Commission alleges that Defendant BLI Northwest Inc., f/k/a Diamond B Constructors Inc. (“Defendant BLI”) and Defendant Creative Sustainable Solutions, Inc., Harris Contracting Company, and Harris Acquisition IV, d/b/a Harris (“Defendant Harris”)

1 discriminated against Ms. Watson, a qualified individual with a disability, when they terminated
2 her from her Rigger position on March 28, 2015.

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4 JURISDICTION AND VENUE

5 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,
6 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the
7 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by
8 reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
9 2000e-5(f)(1) and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991,
10 42 U.S.C. § 1981a.

11 2. The employment practices alleged to be unlawful were committed within the
12 jurisdiction of the United States District Court for the Western District of Washington.

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14 PARTIES

15 3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission" or
16 "EEOC"), is the agency of the United States of America charged with the administration,
17 interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this
18 action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference
19 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. 2000e-5(f)(1).

20 4. From at least March 1, 2015 to January 31, 2018, Diamond B Constructors, Inc.
21 was conducting business as a mechanical contractor.
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1 5. From at least March 1, 2015 to January 31, 2018, Diamond B Constructors, Inc.
2 had continuously been doing business in the State of Washington and continuously had at least
3 15 employees.

4 6. From at least March 1, 2015 to January 31, 2018, Diamond B Constructors, Inc.
5 had continuously been an employer engaged in an industry affecting commerce under Section
6 101(5) of the ADA, 42 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. §
7 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§
8 2000e(g) and (h).

9 7. From at least March 1, 2015 to January 31, 2018, Diamond B Constructors, Inc.
10 was a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

11 8. On January 31, 2018, Diamond B Constructors, Inc. changed its name to BLI
12 Northwest, Inc. (“Defendant BLI”).

13 9. Defendant Creative Sustainable Solutions, Inc. is the parent corporation of
14 Defendant Harris Acquisition IV, LLC and of Defendant Harris Contracting Company.

15 10. Harris is not a separate legal entity, but is a registered assumed name of
16 Defendant Creative Sustainable Solutions, Inc. and its subsidiaries Defendant Harris Contracting
17 Company and Defendant Harris Acquisition IV, LLC. Defendant Creative Sustainable
18 Solutions, Inc. and its subsidiaries do business under the name Harris (collectively “Defendant
19 Harris”).

20 11. At all relevant times, Defendant Harris has continuously been doing business in
21 the State of Minnesota, and since at least January 31, 2018 has been continuously doing business
22 in the State of Washington, and continuously has at least 15 employees.

1 12. At all relevant times, Defendant Harris has continuously been an employer
2 engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. §
3 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by
4 reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

5 13. At all relevant times, Defendant Harris has been a covered entity under Section
6 101(2) of the ADA, 42 U.S.C. § 12111(2).

7 14. At all relevant times, Defendant Harris has been conducting business as a
8 mechanical contractor.

9 15. On January 31, 2018, Defendant Harris purchased and obtained nearly all of the
10 tangible and intangible assets and personal property of Diamond B Constructors, Inc.

11 16. On January 31, 2018, Defendant Harris acquired nearly all of Diamond B
12 Constructors, Inc.'s inventory, supplies, tools, and equipment.

13 17. On January 31, 2018, Defendant Harris acquired all of Diamond B Constructors,
14 Inc.'s contractual interests, including software contracts, service maintenance contracts,
15 equipment leases, and all nearly-completed contracts and work-in-progress contracts, with the
16 exception of one subcontract agreement to be maintained between Defendant BLI and Walsh
17 Construction Company, for which Defendant Harris will perform as sub-subcontractor on behalf
18 of Defendant BLI.

19 18. On January 31, 2018, Defendant Harris acquired all of Diamond B Constructors,
20 Inc.'s goodwill and value of the business as a going concern, and all contacts, client base, client
21 lists, customer lists, prospects and leads and reports and files relating to the business.
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1 19. On January 31, 2018, Defendant Harris acquired all of Diamond B Constructors,
2 Inc.'s accounts receivable.

3 20. On January 31, 2018, Defendant Harris acquired use of the corporate name
4 "Diamond B Constructors" and all websites, telephone numbers, trade names, trademarks,
5 service marks, trademark and registrations, service mark registrations, copyrights, inventions,
6 designs, trade styles and logos used in the business.

7 21. From January 31, 2018 through this date at least, Defendant Harris utilized the
8 website of Diamond B Constructors, Inc. to advertise its services as a mechanical contractor
9 business (<http://www.dbnw.com/index.html>). The website continues to use the Diamond B
10 Constructors name and makes no reference to Defendant Harris during this period of time.

11 22. Defendant Harris purchased Diamond B Constructors, Inc. for the purpose of
12 operating its business as a mechanical contractor.

13 23. As a result of the acquisition, Defendant BLI no longer has any employees.

14 24. As of January 31, 2018, all remaining employees of Diamond B Constructors,
15 Inc., including at least one management official involved in the discriminatory conduct alleged
16 herein, have become employees of Defendant Harris or one of its subsidiaries.

17 25. As of January 31, 2018, Harris assumed operation control of the former Diamond
18 B Constructors, Inc. business.

19 26. Since its purchase of Diamond B Constructors, Inc., there has been substantial
20 continuity of business operations by Defendant Harris.

21 27. With the acquisition, Diamond B. Constructors, Inc. changed its name to BLI
22 Northwest, Inc. and remains a separate legal entity.

1 28. As a result of the acquisition, the location of Diamond B Constructors, Inc. now
2 operates as a branch of Harris Acquisition IV, LLC.

3 29. As of January 31, 2018, Diamond B Constructors, Inc. operates as a subsidiary of
4 Harris Contracting Company

5 30. At the time of purchase, Defendant Harris had actual notice of the EEOC charge
6 which serves as the jurisdictional basis for this action.

7 31. Defendant BLI maintains a CNA Employment Practices Liability Insurance policy
8 that may provide monetary coverage for employment discrimination claims on a claims-made
9 basis.
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11 32. It is not assured that Defendant BLI has had, or will have, the ability to provide
12 relief in this matter.

13 33. On April 13, 2018, Harris stated it will be responsible for future injunctive
14 compliance, if any, that may be incurred related to Ms. Watson's EEOC charge of
15 discrimination.
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17 34. Defendant Harris is liable in this matter under the principles of successor liability.
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19 ADMINISTRATIVE PROCEDURES

20 35. More than thirty (30) days prior to the institution of this lawsuit, Charging Party
21 Angela Watson filed a charge with the EEOC alleging violations of Title I of the ADA by
22 Defendants.
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24 36. On December 18, 2017, the Commission issued to Defendant BLI a Letter of
25 Determination finding reasonable cause to believe that Title I of the ADA was violated and

1 inviting Defendant to join with the Commission in informal methods of conciliation to endeavor
2 to eliminate the discriminatory practices and provide appropriate relief. Prior to January 31,
3 2018, the Commission provided a copy of the Letter of Determination to Defendant Harris.

4 37. The Commission engaged in communications with Defendants BLI and Harris to
5 provide Defendants the opportunity to remedy the discriminatory practices described in the
6 Letter of Determination.

7 38. The Commission was unable to secure from Defendants BLI and Harris a
8 conciliation agreement acceptable to the Commission.

9 39. On April 18, 2018, the Commission issued to Defendants BLI and Harris a Notice
10 of Failure of Conciliation.

11 40. All conditions precedent to the institution of this lawsuit have been fulfilled.

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13 STATEMENT OF CLAIMS

14 41. Since at least March 28, 2015, Defendants have engaged in unlawful employment
15 practices in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. §§ 12112(a).

16 Defendants discriminated against Angela Watson when they terminated her employment from
17 her position as a Rigger, on the basis of her disability, in violation of Section 102(a) of the ADA.

18 42. Ms. Watson is a qualified individual with a disability under Section 3 and 101(8)
19 of the ADA, 42 U.S.C. §§ 12102 and 12111(8). Ms. Watson has epilepsy, a neurological
20 disorder which substantially limits the major life activity of neurological function.

21 43. Ms. Watson has a record of disability, that being epilepsy, a neurological disorder
22 which has caused her to experience three (3) seizures in her lifetime. Ms. Watson's epilepsy
23 substantially limits the major life activity of neurological function.
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1 44. In addition, Defendants regarded Ms. Watson as having a disability in that
2 Defendants terminated her employment because of her impairment, epilepsy.

3 45. Ms. Watson is qualified for the position at issue because she is a pipefitter by
4 trade. Ms. Watson also holds a certification as a rigger.

5 46. On or about March 4, 2015, Ms. Watson was dispatched by her union, United
6 Local 26, for a Rigger position with Diamond B Constructors, Inc. for a project called “Project
7 Turnaround” located at the Tesoro Refinery in Anacortes, Washington.

8 47. On or about March 4, 2015, Ms. Watson provided on a “medical history and work
9 capabilities” form for Defendants that she has epilepsy, takes medication daily, and has no
10 issues.

11 48. From about March 9, 2015 to March 22, 2015, Ms. Watson worked in her position
12 as a Rigger on Project Turnaround on the day-shift.

13 49. On or about March 23, 2015, Ms. Watson transferred to working the night-shift in
14 her same capacity as a Rigger.

15 50. On or about March 24, 2015, Ms. Watson disclosed to her direct supervisor at the
16 job site, Defendants’ Superintendent, that she has epilepsy. Ms. Watson did not make any request
17 for a reasonable accommodation nor did she request to not work at heights.

18 51. Upon learning from the Superintendent that Ms. Watson has epilepsy,
19 Defendants’ General Foreman and a second Defendant Superintendent concluded that Ms.
20 Watson’s epilepsy precluded her from being able to safely work at heights.

21 52. Defendants concluded that working at heights was an essential function of the
22 rigger position that Ms. Watson was unable to safely perform because of her epilepsy.
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1 53. On or about March 28, 2015, Defendants terminated Ms. Watson from her
2 position as a Rigger because of her epilepsy.

3 54. The effect of the practices complained of in paragraphs 41 through 53 above has
4 been to deprive Ms. Watson of equal employment opportunities and otherwise adversely affect
5 her status as an employee because of her disability.

6 55. The unlawful employment practices complained of in paragraphs 41 through 53
7 above were and are intentional.

8 56. The unlawful employment practices complained of in paragraphs 41 through 53
9 above were done with malice or with reckless indifference to the federally protected rights of
10 Angela Watson.
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13 PRAYER FOR RELIEF

14 Wherefore, the Commission respectfully requests that this Court:

15 A. Grant a permanent injunction enjoining Defendants, their officers, agents,
16 successors, assigns, and all persons in active concert or participation with them, from unlawfully
17 failing to provide equal employment opportunities to applicants for employment and employees
18 with disabilities and to accommodate applicants' and employees' disabilities, and any other
19 employment practice which discriminates on the basis of disability.
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21 B. Order Defendants to institute and carry out policies, practices, and programs
22 which provide equal employment opportunities for qualified individuals with disabilities, and
23 which eradicate the effects of its past and present unlawful employment practices.
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1 C. Order Defendants to make whole Ms. Watson by providing appropriate back pay
2 with interest, in amounts to be determined at trial, and other affirmative relief necessary to
3 eradicate the effects of its unlawful employment practices.

4 D. Order Defendants to make whole Ms. Watson by providing compensation for past
5 and future pecuniary losses resulting from the unlawful employment practices described in
6 paragraphs 41 through 53 above, including past and future out-of-pocket losses, in amounts to be
7 determined at trial.

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9 E. Order Defendants to make whole Ms. Watson by providing compensation for past
10 and future non-pecuniary losses resulting from the unlawful practices complained of in
11 paragraphs 41 through 53 above, including emotional pain, suffering, inconvenience, loss of
12 enjoyment of life, and humiliation, in amounts to be determined at trial.

13 F. Order Defendants to pay Ms. Watson punitive damages for their malicious or
14 reckless conduct, as described in paragraphs 41 through 53 above, in amounts to be determined
15 at trial.

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17 G. Grant such further relief as the Court deems necessary and proper in the public
18 interest.

19 H. Award the Commission its costs of this action.

20 JURY TRIAL DEMAND

21 The Commission requests a jury trial on all questions of fact raised by its complaint.

22 DATED this 25 day of June, 2018.

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25 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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